

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket 95-116
)	
NOW Licenses, LLC)	
Request for Temporary Partial Waiver)	
of Section 52.31 of the Commission's Rules)	
Pertaining to the Porting In of Numbers)	

To: Chief, Wireless Telecommunications Bureau

**Request of NOW Licenses, LLC for Temporary
Partial Waiver of Section 52.31 of the Commission's Rules
Pertaining to the Porting In of Numbers**

NOW Licenses, LLC ("NOW"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules,¹ hereby submits this Request for a Temporary Partial Waiver of Section 52.31² of the Commission's Rules (the "Request"). NOW has implemented network upgrades over the past several months in an effort to achieve full compliance with the Commission's Rules governing local number portability ("LNP") by the November 24, 2003 deadline. As a result of those upgrades, NOW is able upon request to port the wireless telephone numbers of its end users to other wireless and

¹ 47 C.F.R. §§ 1.3, 1.925.

² 47 C.F.R. § 52.31.

wireline carriers. However, NOW learned very recently that those upgrades did not perform fully as expected, and that NOW is not at this time capable of porting in the existing telephone numbers of other carriers' customers who want to subscribe to NOW's service. Based upon these facts and circumstances, and other recent developments which are more fully described below, NOW seeks a temporary, partial waiver of the deadline for compliance with the LNP rules to the extent those rules require carriers to be capable of porting-in numbers. Specifically, for good cause shown, NOW seeks a waiver granting a compliance deadline that is seven months after the date on which the FCC acts on³ the pending application for FCC consent to the assignment of the NOW licenses (the "Assignment Application") to Dobson Cellular Systems, Inc. ("Dobson")⁴ that was filed on December 23. The following is respectfully shown:

I. Background

NOW holds 16 licenses authorizing it to construct and operate PCS systems in nine markets within the State of Michigan. Affiliates of NOW acquired certain of those licenses in the original C Block auction. NOW's other licenses were acquired in subsequent auctions or after-market transactions. NOW is a Very Small Business under the Commission's Rules. While limited by capital resources, NOW has timely constructed each of the stations for which its five-year construction benchmark has

³ Specifically, seven months from the date on which the FCC either consents to, or denies, the Assignment Application.

⁴ FCC File No. 0001555982. See *Public Notice*, Report No., 1706, released December 31, 2003, announcing the Assignment Application as accepted for filing.

passed, as well as three additional stations for which the five-year deadline falls later in 2004.

In anticipation of the November 2003 deadline for LNP compliance, NOW initiated a compliance program that contemplated the negotiation of agreements that are necessary to satisfy porting requests, as well as upgrades to NOW's existing network. Specifically, NOW entered into an agreement with TSI for the provision of clearinghouse services for NOW in the LNP context.

NOW also has executed porting agreements with Sprint and Verizon Wireless, and is in negotiations with a number of additional wireless carriers including many of the national carriers. While the FCC has found that carrier-to-carrier agreements are not required in the LNP context, NOW has found that coordinating with other carriers in this manner makes the satisfaction of porting requests more efficient and expeditious.

NOW also took steps to upgrade the software in its Nortel switch to version GSM13 from GSM10, based upon information from Nortel indicating that this upgrade would make NOW's switch LNP compliant. NOW understood that this upgrade also would enable NOW to achieve compliance with the FCC's rules implementing the Communications Assistance for Law Enforcement Act ("CALEA") and regarding the provision of 911 services to persons with speech or hearing disabilities using text telephone devices (the "TTY Rules"). However, when NOW sought to accomplish that software upgrade in recent months, Nortel notified NOW that Nortel would no longer offer the GSM13 software upgrade. Notwithstanding this apparent obstacle to LNP compliance, NOW implemented an alternative solution that included certain upgrades to

the GSM10 software in its switch which were anticipated to make the switch LNP compliant.⁵ Specifically, NOW paid approximately \$400,000 for the installation of patches and other upgrades to its switch in order to comply with the LNP, TTY and CALEA rules. NOW completed those upgrades in early November 2003.

Finally, NOW conducted carrier-to-carrier tests of its system, and tests with TSI, from November 12-22, 2003.⁶ NOW's testing confirmed that NOW's system is capable of satisfying porting-out requests (requests to port telephone numbers of existing NOW subscribers to other carriers). NOW successfully completed port-out requests in less than one hour during those tests, and anticipates that it can complete porting-out requests outside of the testing context within one day of receipt.⁷ Unexpectedly, however, NOW's system proved unable to satisfy porting-in requests (where a subscriber of another carrier seeks to port its number over to NOW to subscribe to NOW's service). The inability to port-in apparently is caused by the lack of compatible LNP software triggers in switch software generations pre-dating version GSM15.

⁵ NOW also was able to achieve CALEA compliance in its switch by additional upgrades. NOW is in the process of implementing some additional network connections to complete its CALEA compliance efforts, and will withdraw its request for extension of the CALEA compliance deadlines once that process has been completed. However, NOW was unable to develop an alternative solution to accomplish compliance with the FCC's TTY Rules. On December 23, 2003, NOW filed a pleading seeking a further extension of the TTY compliance deadline.

⁶ NOW successfully completed this testing prior to the November 24 compliance deadline notwithstanding the network outages experienced by TSI which delayed testing for at least two days.

⁷ To date, NOW has not received any port-out requests.

II. Recent Developments Warrant a Temporary Partial Extension of the Compliance Deadline

Recent developments have resulted in a dramatic change of circumstances for NOW since it commenced its LNP compliance program. NOW has executed an Asset Purchase Agreement with Dobson which contemplates that, subject to FCC consent, NOW will assign all of its FCC licenses (the "Assignment") to Dobson. In connection with that transaction, Dobson also will purchase many of NOW's network assets, including numerous base station facilities and related PCS equipment. Dobson will construct and install a new switch to operate the systems post-closing. Based upon normal processing times for assignment applications of this nature, the parties anticipate that they will consummate the Assignment sometime between May and August of 2004. In view of this timing, any additional upgrades to its switch that NOW undertakes in order to achieve this final component of compliance with the LNP rules will have little relevance, since NOW's switch will be replaced by Dobson's more advanced switch post-closing.

In addition, NOW only very recently learned from Nortel that a far more substantial upgrade to NOW's switch is necessary for LNP compliance than was first indicated. Specifically, after NOW learned that the GSM13 software upgrade would no longer be made available, NOW undertook efforts to achieve LNP compliance through alternative upgrades to the GSM10 software. When those efforts ultimately accomplished only partial compliance, NOW again contacted Nortel to explore alternatives. Nortel indicated that it is providing no further LNP upgrades to the GSM13

software that NOW was intending to move to, and that NOW would be required to upgrade to GSM15 software to achieve the porting-in capability that NOW has not already achieved. This additional upgrade is estimated to cost over \$1,000,000. This is a significant capital investment for which NOW has no budget.

In light of these recent developments, NOW respectfully requests a temporary partial extension of that portion of the LNP rules requiring carriers to be capable of porting-in numbers to a date that is at least seven months from the date on which the FCC acts on the Assignment Application. This limited relief is necessary and justified whether the Commission grants or denies the Assignment Application. If the Application is granted and the Assignment consummated, as the parties anticipate, Dobson will need the additional time to cut over to the new switch and thereby implement its LNP compliance plan. If the Assignment is not consummated, NOW will need this additional time to implement the necessary upgrades in order to achieve full compliance. NOW respectfully submits that a temporary limited extension of the LNP rules is appropriate under Sections 1.3 and 1.925 of the Commission's Rules,⁸ as demonstrated below, and will serve the public interest.

⁸ 47 C.F.R. §§ 1.3, 1.925.

III. Waiver is Justified Under FCC Rules 1.3 and 1.925

FCC Rule 1.3⁹ provides that Commission rules may be suspended or waived “for good cause shown.” NOW is a small rural wireless carrier with limited capital resources. Due to its market size and capital limitations, NOW has very limited bargaining power. Notwithstanding these hurdles, NOW developed a plan to achieve timely compliance with the LNP rules, including the execution of pertinent agreements, network upgrades, and network testing. Given NOW's limited human and financial resources, those efforts were a substantial undertaking. NOW achieved near full compliance within the relevant timeframe under the FCC's rules, and would have achieved full compliance had the software upgrades that NOW planned and installed had the capabilities expected. NOW only recently learned that the GSM13 upgrade wouldn't be available, that its alternative solution would not result in full compliance with the LNP rules, and that NOW must upgrade to GSM15 for full compliance. This additional upgrade would require an additional capital expenditure estimated at over \$1,000,000 -- an amount that NOW has had no opportunity to include in its financial modeling or service plans. Under these circumstances, which were outside of NOW's control or expectations, equity warrants providing NOW with additional time to plan and implement a capital-intensive system upgrade of this type in the event the parties do not consummate the Assignment.

Good cause also exists to grant a waiver in the event the Assignment is consummated. Dobson has advised NOW that it plans to install a new switch to operate

⁹ 47 C.F.R. § 1.3.

the network post-closing, and has a detailed plan to achieve LNP compliance using that new switch. Based upon that plan, Dobson has advised NOW that it anticipates that it will have the switch integrated into the network, tested, and fully LNP compliant within seven months of Commission action on the Assignment Application. In the absence of this limited extension of the deadline for LNP compliance, Dobson will not have any opportunity to complete installation and testing of its switch, or to implement its LNP compliance plan post-closing without the risk of potential enforcement action. Since Dobson has a compliance plan in place, with specific timeframes targeted for compliance, good cause exists to provide Dobson with some flexibility to implement that plan.

Moreover, requiring NOW to make the substantial, and unexpected, additional capital investment into a switch which will be replaced in the near future is not fiscally responsible. Without this limited extension, NOW would be required to expend an additional \$1,000,000 (at least) of its very limited resources in order to comply with one component of compliance not already achieved for the brief period until consummation of the Assignment – a period likely to be a matter of months. The brief period of compliance with this one additional component of the LNP rules is far outweighed by the capital outlays that would be required in the process. While such an investment would be warranted if NOW was planning to retain the systems, it will have no public benefit given the current situation.

Finally, NOW notes that many wireless carriers, including national carriers with far greater resources than NOW, are experiencing difficulties in satisfying number

porting requests. The Commission has announced that, as of December 24, 2003, it had received 2,394 informal complaints – many of which involve the six national carriers.¹⁰ While the potential non-compliance of national carriers with the FCC's rules does not, and should not, constitute an excuse for non-compliance by smaller carriers, it should cause the Commission to consider the technical and practical difficulties associated with compliance, and to reflect such consideration in ruling on requests such as the instant one.

Waiver also is appropriate under Section 1.925, which provides that the Commission may grant a waiver if it is shown that the “underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest.” The purpose of the LNP rules is to enhance competition by increasing customer flexibility to change carriers. NOW's current operations are consistent with these goals. NOW already complies with the most competitively-significant component of the LNP rules – the obligation to port numbers out to other carriers. Thus, NOW's customers are not hindered in their ability to switch service to other carriers. It was only recently that NOW learned that the upgrades it undertook would not enable it to port-in numbers. This limitation does not have an anti-competitive impact on other carriers. To the contrary, the only carrier this harms is NOW, since it cannot enjoy the benefit of the additional subscribers it would have

¹⁰ See “Wireless Portability Complaints: Approximately 2,400 Consumer Complaints Since Porting Began on November 24”, released Dec. 29, 2003. As far as NOW knows, none of the complaints have been directed against it.

obtained by virtue of the LNP rules.¹¹ Obviously, there is no competitive gamesmanship involved here since NOW is capable of relinquishing but not gaining customers with ported numbers.¹² Even with this setback, there still is a definitive plan for compliance with the LNP rules with respect to the PCS systems subject to the Assignment Application. As noted above, Dobson's compliance plan contemplates that the new switch will be installed and operational within seven months from the date of Commission action on the Assignment Application. Thus, the underlying purpose of the LNP rules continues to be the primary focus.

Finally, NOW respectfully submits that a temporary, partial waiver of the LNP compliance deadline would serve the public interest. A grant of this Request will enable the parties to consummate the Assignment, which will introduce into several of the subject markets a strong competitor, with a large regional footprint and next-generation network components that will provide service in compliance with significant FCC mandates such as the LNP rules.


¹¹ To date, NOW has received three port-in requests. NOW has advised those requesting carriers that it is not presently capable of satisfying those requests.

¹² It would appear to NOW that it would be of much greater competitive concern to the Commission if a carrier was able to accept ported numbers while claiming a technical inability to port numbers out.

IV. Conclusion

Based upon the foregoing, NOW respectfully requests a temporary, limited extension of the LNP compliance deadline through a date that is seven months after the Commission acts on the Assignment Application.

Respectfully submitted,
NOW LICENSES, LLC

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Its Attorneys

January 8, 2004

Declaration of Christopher Hahn

I, Christopher Hahn, do hereby declare under penalty of perjury that:

1. I am the Network Operations Manager of NOW Licenses, LLC.
2. I have read the foregoing "Request of NOW Licenses, LLC, for a Temporary Limited Waiver of Section 52.31 of the Commission's Rules."
3. I have personal knowledge of the facts set forth therein.
4. Except with respect to those facts of which judicial notice may be taken, those facts are true and correct to the best of my knowledge, information, and belief.

Executed this 8th day of January, 2004



Christopher Hahn